Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

29 April 2004

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Working paper on reductions of non-strategic nuclear weapons submitted by Austria, Sweden and Ukraine

At the 2000 Review Conference of the Non-Proliferation Treaty, the nuclear weapons states committed themselves to "further reductions of non-strategic nuclear weapons, based on unilateral initiatives and as an integral part of the nuclear arms reduction and disarmament process." In the preparatory committee to the 2005 Review Conference of the Non-Proliferation Treaty, proposals have been made on how to take this matter forward.[1] It has been identified as one on which progress needs to and could be made.

The reasons are the following:

- Non-strategic nuclear weapons are a global concern. Due to the lack of transparency, general knowledge of these weapons is limited. The estimate numbers, depending on definitions, range between 7,000 and 20,000.
- Non-strategic nuclear weapons pose threats. Their portability and the possibility of forward deployment could increase the risk of proliferation and of use. They could be appealing to terrorists due to their relatively small size and the availability of delivery systems for such weapons.
- There are indications that non-strategic nuclear weapons increasingly are seen as a counter to conventional forces – especially if countries lack the resources to advance and modernize their conventional weapons' systems.

  There are also indications of plans to develop new types of non-strategic nuclear weapons, and to consider them useable as battle-field weapons. Thus, there is a danger that the distinction between conventional weapons and non-strategic nuclear weapons will be blurred. Such a development would go against many of the commitments made in 2000 – the unequivocal undertaking, the principle of irreversibility, and the diminishing role of nuclear weapons in security doctrines. It could also threaten the Comprehensive Test-Ban Treaty.

[1] For example working papers by Germany 2002; the New Agenda Coalition 2002 and 2003; Austria, Mexico and Sweden 2003; Belgium, the Netherlands and Norway 2003.

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- Non-strategic nuclear weapons are an integral part of the global nuclear disarmament agenda. It is part of the unequivocal undertaking to achieve the total elimination of nuclear weapons which the nuclear-weapon states committed themselves to at the 2000 Review Conference.
- Non-strategic nuclear weapons have been neglected in arms control and disarmament negotiations. The only specific framework for these weapons is the 1991/92 Presidential Nuclear Initiatives between the United States and the Soviet Union/Russian Federation. We welcome the progress made so far in the implementation of these initiatives including the on-going dialogue between Russia and the United States. At the same time, these declarations are not legally-binding, but political commitments. There is no common understanding regarding the time-frame for the implementation of the initiatives. There is no mechanism for exchange of information or for the verification of compliance.

In line with the mandate from the 2000 Final Document, that the third meeting of the preparatory committee "should make every effort to produce a consensus report containing recommendations to the Review Conference", we suggest that the following recommendations be made on the issue of non-strategic nuclear weapons:

1. States Parties agree to further reduction of non-strategic nuclear weapons, based on unilateral initiatives and as an integral part of the nuclear arms reduction and disarmament process, and urge all concerned states to conduct such reductions.
2. States Parties agree to accord further reduction of non-strategic nuclear weapons a higher priority, as an important step towards the elimination of nuclear weapons, and to be carried out in a comprehensive manner.
3. States Parties agree that reduction of non-strategic nuclear weapons should be carried out in a transparent, verifiable and irreversible manner.
4. States Parties agree on the importance of further confidence-building and transparency measures with regard to non-strategic nuclear weapons.
5. All concerned states are urged to develop further confidence-building and transparency measures in order to reduce the threats posed by non-strategic nuclear weapons.
6. States Parties agree to concrete agreed measures to further reduce the operational status of nuclear-weapon systems, including non-strategic nuclear-weapon systems.
7. States Parties agree on the importance of enhancing and ensuring special security and physical protection measures for the transport and storage of non-strategic nuclear weapons, their components and related materials through, *inter alia*, the placing of such weapons in physically secure central storage sites, with a view to their removal and subsequent elimination by the nuclear-weapon States. We urge all concerned states to take measures in this regard.
8. The Russian Federation and the United States of America agree to preserve, reaffirm, and implement the 1991/1992 Presidential Nuclear Initiatives, and to increase transparency in the implementation process thus creating greater confidence.

9. The Russian Federation and the United States of America commit themselves to codify the 1991/1992 Presidential Nuclear Initiatives, thus facilitating verification and transparency, and to initiate negotiations on further reduction of non-strategic nuclear weapons. This mechanism could at a later stage be extended to all concerned states.

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Working paper on export controls submitted by Germany

The latest cases of nuclear proliferation have demonstrated that today one of the fundamental challenges to non-proliferation is the easy access to nuclear-capable dual-use technology and black market networks. One serious weakness that became apparent in this context are inadequate export controls. They greatly facilitate the job of nuclear proliferators. If they are allowed to continue unchecked they will undermine all other efforts of the State Parties to contain nuclear proliferation. Therefore, not to address this problem in a proper way would be highly negligent with the purpose of the Treaty.

In this context, the ratification of the Additional Protocol by all States Parties would represent a great leap forward since it gives the IAEA increased capabilities to monitor the trade with nuclear items. Germany regards Comprehensive Safeguards Agreements including the conclusion of an Additional Protocol as the safeguards standard that is demanded by Art. III of the Non-Proliferation Treaty. Therefore, we call upon all States Parties to conclude, ratify and implement as soon as possible an Additional Protocol.

The other lesson that needs to be drawn from these latest findings is that we need a sustained and concerted effort to set up and maintain in all states a minimum standard of export controls.

As a first step the IAEA, in cooperation with the States Parties, could take upon itself to define the minimum standard of export controls in the nuclear field that is necessary to achieve the non-proliferation goals of the NPT. The Treaty already demands export controls in Art III.2. However, those are restricted to nuclear items. They do not cover items that can be used in the nuclear and non-nuclear fields. After the lessons learned in the 1990s we believe any up-to-date minimum standard of export control must address the question of those "dual-use" items as well.

As a second step the IAEA should take an active role in enhancing nuclear export controls in NPT member states. At the request of a country or upon a proposal of the IAEA Secretariat accepted by the country the IAEA would send an expert team to this country to see if there is a

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possibility to improve export controls measured against the common minimum standard. Taking up the idea and format of the IPPAS missions, the expert team could consist of national export control experts financed by their home countries. The team would make a confidential report to the Secretariat and the country. The report shall contain the results of the analysis and, if appropriate, recommendations how to improve nuclear export controls. The Secretariat would then cooperate with the country to enhance its export controls.

IAEA assistance in enhancing nuclear export controls should be open to all IAEA member States. We would call on all States to make adequate use of the IAEA assistance.

The Third PrepCom is requested to recommend to the 2005 Review Conference that this proposal is reflected in the results of Review Conference.

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Strengthening the NPT against withdrawal and non-compliance

Suggestions for the establishment of procedures and mechanisms

Working paper submitted by Germany

At the Second Prepcom of the NPT Review process 2005 Germany introduced ideas on procedures and mechanisms which could strengthen the NPT against withdrawal and non-compliance. This working paper elaborates these ideas with a view to stimulating further discussion on them.

1. Structuring Withdrawal Procedures

The NPT is the most universal multilateral treaty. It is of paramount importance to maintain its authority. In order to do so every effort should be undertaken to prevent state parties from withdrawing from the NPT and subsequently becoming de-facto nuclear weapon states. The Review Conference could look for an agreement on the rules and procedures to be observed in case that a state has the intention to withdraw from the NPT. Such an agreement should in no way limit or exclude the right of states to withdraw from the Treaty as enshrined in Art.X of the NPT, but it would set out in advance the necessary steps and procedures which should be observed in such a case.

The following ideas might be further explored:

- Establishing a requirement for a state contemplating to withdraw from the NPT to submit to all NPT-Partners prior to the notification of withdrawal in accordance with Art X a written information setting out the concerns that have led it to contemplate withdrawing from the Treaty.

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- Establishing a requirement for a state contemplating to withdraw from the NPT to conduct prior consultations with NPT-state parties before exercising its right in accordance with Art. X. The information provided by that state would provide the point of departure for these consultations. The consultations could take place in the context of an extraordinary conference of the NPT to be convened immediately after a state has declared its intention to withdraw and has informed about the reasons for its intention as set out above. The consultations should provide an opportunity for exploring possible ways and means to prevent a withdrawal including measures to be adopted in the NPT context which would satisfy the stated security needs of the party which intends to withdraw.

- Examining the possibility to develop a list of criteria relating to the definition of the "extraordinary event, related to the subject matter of this Treaty". Such a list of criteria might also be helpful for conducting the consultation process suggested above.

- Determining that the right of withdrawal cannot be exercised in cases where the state in question is or is alleged to be (with relevant investigations/procedures underway) in non-compliance with the NPT.

2. Structuring the communication between NPT members

The NPT does not contain any provisions regarding procedures to be followed in cases of non-compliance. Thus when for example the grave allegations regarding non-compliance by the DPRK arose in October 2002, the community of NPT-state parties as such had no direct way of communicating or co-ordinating its views.

It might therefore be worth examining whether the Review Conference would be able to remedy the situation by establishing communication rules and procedures in cases of serious non-compliance. Possible Mechanisms to be established in the NPT framework should however in no way detract from the role and obligations of the IAEA in this regard.

The following suggestions might be examined by the Review Conference:

- Establishment of a formal point of contact system similar to the ones that were established for other Treaties and agreements (for example ICC of HCoC). A point of contact could also be used to strengthen the interactivity of the Review Process in providing a forum for questions and answers between the regular Prepcom Meetings and the Review conferences themselves

- Establishment of procedures for extraordinary conferences of the NPT-state parties to be convened in cases of serious violations of the NPT. While the criteria for an extraordinary conference in a case of withdrawal can be clearly defined, a conference in reaction of serious violations of the NPT has to be subject to a quorum to be decided. Such a conference would provide high-profile opportunities to discuss specific non-compliance cases.

3. Structuring the reaction to a withdrawal

In cases where a withdrawal of a state from the NPT can ultimately not be avoided, the international community has to look for ways to reduce the possibilities of such a state, to benefit further from the technology and the know-how it has acquired under Art.IV of the NPT during its membership. This might indeed be very difficult to put into practice once a withdrawal has taken place. Thus the Review Conference could

- reaffirm the understanding of the NPT member states, that membership of and full compliance with the NPT represents a key requirement of the international community in order to participate in the development of the applications of nuclear energy for peaceful purposes.

- call on supplier countries to include in their delivery agreements the provision that the items delivered should remain under IAEA safeguards if the recipient state withdraws from the NPT.

- underline the understanding, that nuclear equipment, technology and know-how obtained as a member state of the NPT in accordance with article IV of the NPT, remains also in case of a withdrawal from the NPT by a state restricted to peaceful uses only and in consequence has to remain subject to IAEA-safeguards.

- consider in addition the possibility to establish a right for supplier countries or the IAEA to ask a state for the immediate restitution of material and technology delivered under Art.IV of the NPT in case that the state withdraws from the NPT. There could also be a provision allowing for the shut down of relevant capacities/facilities to be required. No state withdrawing from the NPT should have the right to benefit from the capacities and technological knowledge that it has established in the nuclear field as a result of having made use of Art.IV of the Treaty and/or having benefited from the assistance and cooperation provided under the Treaty by the IAEA or other State parties.

- reaffirm that in accordance with international law a state withdrawing from the NPT is still accountable for breaches or acts of non-compliance committed while still being a party to the NPT. Thus the state will continue to be subject to decisions of the relevant international institutions such as the IAEA and the UNSC.